

REMARKS

This paper is presented in response to the Office Action. No claims are canceled, amended or added by this paper. Accordingly, claims 8-12, 14, 15, and 36 remain pending.

Reconsideration of the application is respectfully requested in view of the following remarks. For the convenience and reference of the Examiner, Applicants' remarks are presented in the order in which the corresponding issues were raised in the Office Action.

I. General Considerations

A. Claim Amendments and/or Cancellations

Although Applicants have not amended the claims herein, Applicants, may, on further consideration, determine that claims of broader scope than those now presented are supported. Accordingly, Applicants hereby reserve the right to file one or more continuing applications with claims broader in scope than the claims now presented.

Consistent with the points set forth above, Applicants submit that any claim amendments, claim cancellations or statements advanced by the Applicants in this or any related case, constitute or should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

B. Remarks

Applicants respectfully note that the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration by the Applicants, in this case or any other, of the merits of additional or alternative arguments. Applicants also note that the remarks, or a lack of remarks, set forth herein are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants as to any assertions, allegations or characterizations made by the Examiner at any time in this case.

II. Rejection of Claims 8-12, 14, 15, and 36 under 35 U.S.C. § 112

The Examiner has rejected claims 8-12, 14, 15, and 36 under 35 U.S.C. § 112, First Paragraph as failing to comply with the enablement requirement. Specifically, the Examiner asserts that claims 8-12, 14, 15, and 36 recite subject matter that was not sufficiently described in the specification as to enable one skilled in the art to make and/or use the invention. More specifically, the Examiner asserts that there is no support in the specification for InGaAsP being one of the materials that can be used in the oxidized layer of the first mirror. Applicants respectfully disagree.

In the rejection, the Examiner notes that in the specification, “InGaAsP is listed as a material in the top mirror but not the lower one.” *Office Action* at 2. Applicants submit that while the original specification may not have included the aforementioned element, the original claims did. In the original set of claims, which are considered part of the original disclosure (see MPEP § 2163.06), claim 16 as initially filed was directed to a VCSEL that includes “...a first stack formed on a substrate below a quantum well region...” Claim 19 (as initially filed) depended from claim 16 and recited that “...every other layer that is at least partially oxidized of said first stack of layers is formed from a material of a group comprising InGaAsP ...” *Emphasis added*. Accordingly, Applicants respectfully submit that the application clearly provides adequate support for claim 1.

In the interest of ensuring continuity between the specification and the claims, and further to MPEP § 2163.06, Applicants have amended the specification herein to include “InGaAsP” as one of the materials that can be used in the oxidized layer of the first stack.

In view of the foregoing, Applicants respectfully submit that the rejection has been rendered moot and should be withdrawn.

CONCLUSION

In view of the remarks submitted herein, Applicants respectfully submit that each of the pending claims 8-12, 14, 15, and 36 is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 18th day of March 2008.

Respectfully submitted,

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